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FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
2014 DEC 18 PM 1 52
STEPHAN HARRIS, CLERK
CHEYENNE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

v.

MITCHELL PAUL MODELESKI, aka
PAUL ANDREW MITCHELL,

Defendant.

Criminal No. 14CR027-F

**MOTION FOR LEAVE OF COURT TO FILE DISMISSAL
OF SUPERSEDING INDICTMENT AS TO DEFENDANT MODELESKI**

The United States Attorney for the District of Wyoming moves the Court for leave to file a dismissal without prejudice of the Superseding Indictment against the Defendant Mitchell Paul Modeleski, aka, Paul Andrew Mitchell, in the above-entitled case pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure for the following reasons:

1. The Defendant was previously determined by this Court to be suffering from a mental disease or defect rendering him mentally incompetent to stand trial.
2. After being declared incompetent, the Defendant was transported to the United States Medical Center for Federal Prisoners in Springfield, Missouri, to undergo treatment to restore the Defendant to a competent mental state, pursuant to 18 U.S.C. 4241(d). Attempts at

restoration have proven to be unsuccessful according to the Forensic Report submitted to the Government and the Court, dated November 24, 2014.

3. The Defendant remains unable to proceed in this matter due to his mental impairment.

4. Due to the nature of the Defendant's mental impairment, it appears that there is no substantial probability that in the foreseeable future the Defendant will regain the mental capacity to allow the proceedings against him to go forward.

5. The Government has no compelling interest in seeking a hearing under *Sell v. United States*, 539 U.S. 166 (2003).

6. The Defendant has not been certified by United States Medical Center for Federal Prisoners, at Springfield, Missouri, as posing a danger to others or property and his release would not create a substantial risk of bodily injury to another person or serious damage to the property of another.

7. Upon dismissal of the superseding indictment, 18 U.S.C. § 4246(a) does not prohibit the release of the Defendant and he should therefore be released from custody.

DATED this 17th day of December, 2014.

CHRISTOPHER A. CROFTS
United States Attorney

By:



L. ROBERT MURRAY
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2014, the foregoing was served upon the following,
by depositing same, postage prepaid, in the United States Mail.

Terry J. Harris, WyBar#5-2068
Harris & Harris, P.C.
P.O. Box 368
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For the United States Attorney's Office